IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2755 OF 2004

Sayyed Muddasir Hussain,)
Age 65 years, Occ. Plumber,)
R/o.S.M.Hussain Chawl,)
Idga Maidan, Jogeshwari (East),)
Mumbai - 400 060.)..Petitioner

Vs.

1. The State of Maharashtra,)

2. Shri A.N.Roy,)
Commissioner of Police,)
Brihan Mumbai.)

3. The Superintendent of Jail,)
Nashik Central Prison,)
Nashik.)..Respondents
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Shri Nitin Pradhan with Ms S.D.Khot for the Petitioner.

Shri D.S.Mhaispurkar, APP for the Respondents.
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CRIMINAL WRIT PETITION NO.2765 OF 2004

Sayyed Izaj Hussain,)
Age 63 years, Occ.Plumber-Contractor,)
R/o.Sayyed Izaj Hussain Manzil,)
Idga Maidan, Jogeshwari (East),)
Mumbai - 400 060.)..Petitioner

Vs.

1. The State of Maharashtra,)

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Commissioner of Police,)
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Nashik Central Prison,)

Nashik.)..Respondents
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Shri Nitin Pradhan with Ms S.D.Khot for the Petitioner.

Shri B.R.Patil, Addl.Public Prosecutor for the respondents.
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Shri B.H.Mehta, APP for the respondents.
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CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATED : 25th APRIL, 2005.

ORAL JUDGMENT : (Per R.M.S.Khandeparkar, J)

1. Since common questions of law and facts arise

in these petitions, they were heard together and are being disposed of by this common judgment.

2. In all the three petitions, the detenus are subjected to detention with a view to prevent them from acting in any manner prejudicial to the maintenance of public order, and in exercise of the powers under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981, hereinafter referred to as "MPDA Act".

3. The Criminal Writ Petition No.2755 of 2004 has been filed by father of the detenu, viz. Imran Muddassir Sayyed, against the order of detention dated 10th September, 2004, whereas the Criminal Writ Petition No.2765 of 2004 has been filed by father of the detenu, viz. Sayyed Wahid Ahmad Izaj Hussain, against the order of detention dated 26th August, 2004, and the Criminal Writ Petition No.2766 of 2004 has been filed by father of the detenu, viz. Sayyed Farid Mohamad @ Ahmad Izaj Hussain, against the order of detention dated 26th August, 2004.

4. Though the impugned orders of detention are

sought to be challenged on various grounds enumerated in the petitions, the challenge to the impugned orders of detention has been restricted in the course of hearing of the matters to four grounds. Firstly that the sponsoring authority failed to place before the detaining authority the relevant and material piece of documents in the form of the application for bail and the order passed by the learned Magistrate on the said application in relation to the C.R.No.62 of 2004. Secondly, that the representations made by the detenus against the orders of detention were not considered at all by the respondents. Thirdly, that the sponsoring authority did not place before the detaining authority, nor furnished to the detenus the copy of the ballistic report in relation to the revolver in question. Fourthly that the orders of detention have been passed only on one ground which relates to the C.R.No.62 of 2004, as the other ground which relates to in-camera statements, the same having been recorded without notice to the detenus cannot be said to be sufficient to justify the order of detention and for the same reason, it cannot be a ground in support of the orders of detention and as the ground based on C.R.No.62 of 2004 is not sustainable on account of failure to consider relevant documents - bail and

ballistic report - the provisions of Section 5A of the said Act are not attracted, and therefore, the orders are bad-in-law.

5. The learned Advocate for the petitioners while elaborating the grounds of challenge to the impugned orders of detention has sought to rely upon the decisions of the Apex Court in the matter of **K.Varadharaj v. State of T.N. & Anr.,** reported in (2002) 6 SCC 735, and of **Madhu Garg v. Union of India & Anr.,** reported in (2004) 7 SCC 625.

6. As regards the first ground of challenge, which relates to failure on the part of the sponsoring authority to place before the detaining authority the copy of the bail application and the order passed by the learned Magistrate on such application, the respondents in their reply have stated that the copy of the applications for bail filed by the detenus were placed before the detaining authority along with the orders of bail passed on such applications by the learned Magistrate. It has also been disclosed that the reasons in support of the orders regarding release of the detenus on bail were to be recorded by the learned Magistrate separately and they were not

available alongwith the orders of bail. It has been further stated in the affidavit in reply that "since the reasons were not ready till the Order of Detention was issued, the Sponsoring Authority did not forward the same to me." Evidently, on the date of passing of the order of detention, the Magistrate's orders disclosing the reasons for the grant of bail by the Court were not ready and, therefore, there was no occasion for the sponsoring authority to place any such order before the detaining authority. Nevertheless, the orders under which the detenus were released on bail were available and were accordingly placed before the detaining authority before passing the detention orders. It is further contended on behalf of the petitioners that the respondents have not disclosed as to when the orders disclosing reasons passed by the Court were available and were placed before the detaining authority. Undoubtedly, the said facts have not been disclosed in the affidavit in reply filed by the respondents. However, apart from the fact that the said facts are not material for the decision in the matter, there was no reason for the respondents to disclose the said facts in the affidavit in reply unless a specific statement on oath made by the detaining authority that the reasons in

support of the orders of bail were not available at the time of passing of the detention orders was either denied or disputed by the petitioners by filing appropriate affidavit-in-rejoinder in that regard. Even otherwise, the said facts are irrelevant in the matter, once it is revealed that at the time of passing of the detention orders, the orders disclosing the reasons for the grant of bail were not available. Once it is revealed that a particular document was not available to the sponsoring authority for the purpose of placing the same before the detaining authority, merely on the ground that such non-existent document was not considered by the detaining authority cannot be a justification for interference in the orders of detention. The first ground of challenge, therefore, fails.

7. The decision of the Apex Court in **K.Varadharaj's case (supra)**, which is sought to be relied upon in support of the first ground of challenge, is of no help to the petitioners. The decision rather supports the view that we are taking in the matter. In the said decision, the Apex Court had clearly ruled that "it is clear that placing of the application for bail and the order made thereon

are not always mandatory and such requirement would depend upon the facts of each case." Once the facts disclosed that the application for bail was infact placed before the detaining authority along with the order of bail passed thereon, though the reasons in support of the order of grant of bail were not placed before the detaining authority because the same were not available till the date of passing of the detention order, it cannot be said that the absence of reasons in support of the order of grant of bail would have any bearing on the subjective satisfaction of the detaining authority. It is always to be borne in mind that while considering the challenge to the detention order on the ground of failure to place certain materials before the detaining authority, it is to be primarily ascertained whether such materials were in existence at the time of passing of the detention orders. The point in that regard cannot be considered in relation to a non-existing material at the time of passing of the detention order. Once it is clear from the records that the application for bail and whatever the order which was passed thereon were available prior to the passing of the detention orders and were placed before the detaining authority and the same were considered by it before arriving at the

subjective satisfaction of the detaining authority, merely because the detaining authority had no occasion to consider the non-existing document, the same cannot be a ground for interference in the detention orders.

8. As regards the second ground of challenge which relates to non-consideration of the representations made by the detenus against the orders of their detention, in fact, the petitions nowhere raise a specific ground about the failure to consider the representations or failure on the part of the respondents to communicate the decision on the representations, though there is a statement made in each of the petitions that the detenus did make representations against the orders of detention. However, considering the fact that the challenge relates to the detention orders imposing restrictions on their freedom, the learned Advocate for the petitioners was allowed to argue the said ground in support of the challenge to the impugned orders of detention. However, as regards the case of the detenu Imran Muddassir Sayyed in the Criminal Writ Petition No.2755 of 2004 is concerned, undisputedly, the representation was made to the detaining authority on 17th September, 2004, while the State Government had

already approved the order of detention on 16th September, 2004. Being so, no grievance can be made for non-consideration of such representation by the detaining authority which was addressed to it after approval of the detention order by the State Government. Undisputedly, no representation was made by the detenu Imran Muddassir Sayyed to the State Government. However, the learned Advocate for the petitioners sought to contend that there is an admission on the part of the respondents that there was such representation to the State Government. Indeed, in the affidavit in reply, the detaining authority while referring to the contents regarding the representation dated 17th September, 2004 has stated that "the contentions therein regarding the representation dated 17.9.2004 addressed to the Detaining Authority and State Government will be dealt subsequently while dealing with the grounds of challenge." Referring to the said statement, the learned Advocate for the petitioners has submitted that the same clearly discloses admission on the part of the respondents that there was a representation made by the detenus to the detaining authority. However, the fact remains that a clear statement has been made in the memo of writ petition to the effect

that the representation was addressed to the Commissioner of Police, the respondent No.2, and undisputedly the respondent No.2 is the detaining authority. Even a copy of the representation, which is annexed to the petition at page 363, discloses that the same was addressed to the Commissioner of Police and not to the State Government. Even a copy thereof was not submitted to the State Government. Being so, merely because the detaining authority in its affidavit in reply has stated that the contentions therein regarding the representation dated 17.9.2004 would be dealt with subsequently, that would not enure to the benefit of the petitioners to contend that in fact, there was a representation addressed to the State Government. Besides, the statement in that regard has not been made on behalf of the State Government but the same has been made by the detaining authority. The detaining authority is not the competent authority to make any statement on behalf of the State Government so as to bind the State Government of the said statement in the affidavit of the detaining authority pertaining to the alleged representation. In the absence of any representation being made to the State Government, there was no obligation upon the State Government to consider any

representation.

9. As regards the representation dated 17th September, 2004 by the detenu Sayyed Wahid Ahmad Izaj Hussain in the Criminal Writ Petition No.2765 of 2004 is concerned, the detaining authority in its affidavit in reply has clearly explained how the representation was considered expeditiously. It has also been explained in the affidavit in reply about the representations dated 31st August, 2004 and 1st October, 2004 and the speedy consideration thereof. Similar is the case in relation to the detenu Sayyed Farid Mohamad @ Ahmad Izaj Hussain in the Criminal Writ Petition No.2766 of 2004 whose representations dated 20th September, 2004, 22nd September, 2004 and 1st October, 2004 were expeditiously considered and the details in that regard are to be found in the affidavit filed on behalf of the State Government.

10. Undoubtedly, it was sought to be contended that the decision on the representations was not communicated to the detenus. However, there was no such statement of fact regarding non-receipt of the decision on the representations in any of the petitions. In the affidavit also, there is no

statement regarding communication of the decision on the representations to the detenus, though the affidavit filed by the Jailor discloses the communication of such decision to the detenus. Undoubtedly, in the absence of specific statement about non-receipt of the decision on the representations, though strictly there is no obligation cast upon the respondents to disclose such intimation of the decision in the matter which relates to the detention orders, the respondents are certainly expected to disclose such facts in the affidavit to be filed on behalf of the State Government. Mere statement in that regard by the jail authority is not sufficient. It is also necessary for the authority filing affidavit on behalf of the State Government to confirm the said fact. However, failure in that regard need not prove to be fatal and would not justify interference in the orders of detention. Nevertheless, the respondents are certainly expected to disclose the said fact in the affidavit to be filed on behalf of the State Government. In the case in hand, however, failure to disclose the said fact would not enure to the benefit of the petitioners since there is not a whisper about absence of such communication of decision to them in any of the

petitions.

11. As regards the third ground of challenge which relates to the failure on the part of the sponsoring authority to place the copy of the ballistic report before to the detaining authority or to furnish the same to the detenus, it is well settled law that the detenu need not be supplied with the documents which are either not relied upon or not even referred to by the detaining authority. Undisputedly, the ballistic report has neither been relied upon nor referred to. The learned Advocate for the petitioners has contended that in the absence of ballistic report, the use of revolver or arm by the detenu which is the sole ground for issuance of the detention orders, cannot be sustained. First of all, the contention that it is the sole ground for issuance of detention orders is to be rejected in limine, as the detention orders have been passed in relation to the C.R.No.62 of 2004 which pertains to the use of revolver or arm by the detenus, as also there are other grounds which are disclosed from the in-camera statements of the witnesses. Being so, even assuming that one of the grounds is found to be not established, certainly taking resort to Section 5A, the orders of detention would not call for any

interference. That apart, failure to consider the ballistic report cannot be a justification for interference in the impugned orders. The contention that in the absence of such ballistic report there was no occasion for the subjective satisfaction of the detaining authority regarding necessity for passing the impugned orders is devoid of substance. It is to be borne in mind that for the purpose of issuance of detention orders, it is not necessary to have the materials which would establish the guilt of a person beyond reasonable doubt. The detention orders are passed to avoid repeatation of the criminal activities on the part of the detenus. Sufficiency of material to arrive at the subjective satisfaction has to be ascertained from the view point of the detaining authority, as revealed from the grounds of detention in support of the detention order. The High Court in exercise of writ jurisdiction is not expected to sit in appeal over those grounds of detention while considering the issue pertaining to the subjective satisfaction of the detaining authority for issuance of the detention order. Being so, the contention sought to be raised on behalf of the petitioners that in the absence of ballistic report, there was no occasion for the detaining authority to arrive at the

subjective satisfaction regarding the need of issuance of detention orders is to be rejected being without any substance. Once it is not in dispute that apart from the ballistic report, there were other materials which would be sufficient to arrive at the subjective satisfaction of the detaining authority, there is no case made out for interference in the impugned orders of detention.

12. The attention was sought to be drawn to the decision of the Apex Court in **Madhu Garg's case (supra).** That was a case wherein the detention order was passed on the ground that the export consignment was misdeclared stating it to be alloy steel forging (machine) although actually the same was a metal scrap and the impugned order was issued without waiting for the results of the chemical analysis. The order of detention in **Madhu Garg's case (supra)** was undisputedly passed on the two allegations, viz. (i) the export consignment was misdeclared stating it to be alloy steel forging (machine) although actually the same was a metal scrap; and (ii) the goods were over invoiced as the value thereof was declared by the exporter to be Rs.170-175 per kg instead and in place of its actual value being only Rs.4-5 per kg.. In the

said case, the Apex Court in the paragraph 15 has observed that "It is not in dispute that one of the allegations made against the detenu in the grounds of detention was that he had exported consignment upon misdeclaration to the effect that alloy steel forging (machined) was being exported whereas actually the same was metal scrap." After the said observation and after referring to the show cause notice which was issued in that matter, the Apex Court ruled thus:

> "A bare perusal of the aforementioned averments in the said notice do not leave any manner of doubt whatsoever that upon chemical analysis of materials, it was found that the samples were made up of alloy steel. It has not been disputed before us that the alleged goods which are the subject-matter of the export were seized in the presence of the detenu and were sent for chemical analysis before CRCL. Upon obtaining a report dated 23-10-2003, it appears, that the samples were made up of alloy steel although the test report could not throw any light as to whether the goods were alloy steel forging (machined), as declared by the exporter. The

> subject-matter of the consignment, therefore, was not scrap metal. Had the detaining authority waited for the results of the said chemical analysis before issuing the impugned order of detention, the first ground stated therein could not have been made a basis therefor."

After above observations, it was held that "the order of detention, therefore, in our considered opinion, was passed in haste without there being adequate materials." Having held so, the Apex Court had refused to uphold the order of detention holding that "That may be so but it is now well settled that when one of the grounds of detention is found to be based on irrelevant materials not germane for passing the order of detention, the entire order of detention shall stand vitiated in law." Obviously, the decision was delivered on the basis that the order of detention once shown to be unsustainable on one of the grounds, the entire order stands vitiated. However, the Nine Judges' Bench of the Apex Court in **Attorney General for India etc.etc. v. Amratlal Prajivandas and Others,** reported in 1995 Cri.L.J.426, has clearly ruled that "where an order of detention is made on

more than one ground, it must be deemed that there are as may orders of detention as there are grounds." Being so, even though the detention order can be held to be bad-in-law on one of the grounds, it does not render the entire order of detention to be bad-in-law when such an order is passed on the basis of more than one ground. In the matters in hand, the detention orders have been passed on more than one ground, and considering the same, merely on assumption that on placement of the said ballistic report before the detaining authority, it might have influenced in one way or the other, that by itself would be sufficient to hold the detention orders to be bad-in-law when the orders can be supported by other grounds.

13. As the fourth ground of challenge that the ground based on in-camera statements cannot be said to be a ground as those statements were recorded without prior notice to the detenus is totally devoid of substance. It is well settled law by a catena of decisions of the Apex Court as well as of this Court that in-camera statements can be relied upon for the purpose of issuing detention order and hence there is no substance in the said ground of challenge.

14. For the reasons stated above, therefore, no case is made out for interference in the impugned orders of detention of the detenus, and therefore, the petitions fail and are hereby dismissed. Rule in all these petitions accordingly stands discharged with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(P.V.KAKADE, J)